UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 11 Cr. 1054 (RJS)

JOSE EVARISTO LINARES
CASTILLO,

Defendant.

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New York, N.Y.
April 26, 2013
10:15 a.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
EDWARD KIM
MICHAEL LOCKARD
ADAM FEE
Assistant United States Attorneys

PAUL R. NALVEN
Attorney for Defendant

ALSO PRESENT: SELMA MARKS, Interpreter

(Case called)

MR. KIM: Edward Kim, Michael Lockard, and Adam Fee for the government. Good morning, your Honor.

THE COURT: How many does it take to change a light bulb?

MR. NALVEN: For the defendant, Paul Nalven. Good morning, your Honor.

THE COURT: Mr. Nalven, good to see you.

Mr. Linares Castillo, good morning to you.

I'll note for the record that Mr. Linares Castillo is proceeding through the services of a court certified interpreter. He is wearing a headset that allows him to hear these proceedings translated from English into Spanish, which is native language.

Mr. Linares Castillo, if at any point you have any difficulty understanding these proceedings, please let me know, whether it's a technical problem, perhaps just I'm not being clear or maybe the lawyers are not being clear, perhaps the translation is not clear. Whatever it is, we will correct it. But we will rely on you to tell us when you are having difficulty. All right?

THE DEFENDANT: Yes, your Honor.

THE COURT: This is an initial appearance for Mr. Linares Castillo. He has been charged in indictment and he has not been arraigned. I am the first judge he is seeing, correct?

MR. NALVEN: That's correct, your Honor.

THE COURT: Let's just for a moment then, Mr. Linares Castillo, I want to make sure that you understand your rights. You have the right to remain silent. If you have spoken to agents or law enforcement officers at this point already, you don't have to continue if you don't want to. You have that right. You also have the right to an attorney. Mr. Nalven is representing you. If you did not have any ability to pay Mr. Nalven, then a lawyer would be appointed to represent you at no cost to you.

You understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And I want to also make sure that you've had a chance to see the indictment in this case. Have you seen the indictment, which has a number on it. It's S2 11 Cr. 1054.

THE DEFENDANT: Yes, your Honor.

THE COURT: I am not arraigning him on the Florida indictment. That's for another day, right?

MR. KIM: That is correct, your Honor.

THE COURT: It's not been transferred here.

Mr. Linares Castillo, do you read English?

THE DEFENDANT: No, your Honor.

THE COURT: This indictment is ten pages. It's in English. Was it translated into Spanish for you?

MR. NALVEN: Your Honor, maybe I could speak to that. As part of the extradition protocol between the United States and Colombia, my client, in a timely fashion, was provided both an English and a Spanish language version of the indictment. I've been his lawyer since shortly after his arrest and have visited him several times at his place in custody in Colombia. We have gone over the substance of the indictment. And with your Honor's permission, we would like to enter a plea of not guilty.

THE COURT: Let's where I was headed. I wanted to make sure that he has reviewed and read the indictment.

What Mr. Nalven just said is correct, Mr. Linares Castillo?

THE DEFENDANT: Yes, your Honor.

THE COURT: Would you like me to read this indictment out loud here in court, or do you waive the public reading of the indictment?

MR. NALVEN: I'd like to waive it, your Honor.

THE COURT: That's fine and that's not uncommon, that a defendant would waive that right, but it's really Mr. Linares Castillo's decision.

Mr. Linares Castillo, I'm happy to read the indictment, which would then be translated into Spanish for you to hear it. But if you feel that's not necessary, if you've already read the Spanish translation and you are already comfortable that you understand what's in the indictment, that's fine, then you could just tell me that you don't wish to have it read out loud.

THE DEFENDANT: I don't want you to read it to me aloud.

THE COURT: That's fine.

I should summarize it. You are charged in this indictment with a conspiracy to import narcotics, a narco-terrorism conspiracy, and material support to a terrorist organization.

How do you now plead to the charges contained in this indictment, guilty or not guilty?

THE DEFENDANT: Not guilty, your Honor.

THE COURT: That's fine.

Let's then talk about next steps in this case. There is a Florida indictment that charges Mr. Linares Castillo with other serious crimes. I received a letter from the government with a request that we file it under seal. Mr. Nalven is CC'd, so I don't think I'm saying anything that anybody hasn't heard. The request is that Mr. Linares Castillo be allowed to travel down to Florida and then report back here in a couple of months, correct?

MR. KIM: That's correct, your Honor.

THE COURT: And he would not be in custody during that time or he would be in custody.

MR. KIM: He would be in the custody of the marshals, your Honor.

THE COURT: We are here today with agents. Has Mr. Linares Castillo been to pretrial services?

MR. KIM: He has briefly, your Honor, but Mr. Nalven waived a pretrial services report.

THE COURT: So the plan is what in terms of bail and detention?

MR. NALVEN: Your Honor, I'm in a position that my client is a Colombian national. Because we are dealing with a presumption case, we are in a position to stipulate to a permanent order of detention with leave to renew, if your Honor would go along with that.

THE COURT: That's fine. You always have a right to renew. I just wasn't sure, since I don't see any marshals here today.

MR. NALVEN: We are kind of a hybrid procedure. It's almost an initial presentation and an arraignment at the same time.

THE COURT: I think that's right. The plan then would be to take Mr. Linares Castillo to the marshals after this and then he would be detained, pending either a motion for bail or resolution of the case, right?

MR. KIM: That's correct, your Honor. I think this is a procedure the marshals follow at the defendant's first appearance at this building now.

THE COURT: I'm fine with that.

Mr. Linares Castillo, because you've been extradited from Colombia to the United States and because of the nature of these crimes, there is a presumption that you would remain in custody pending the trial of this case. So I am going to order that you be detained, you be held by the Bureau of Prisons and the marshal's service until this case is resolved.

If at any point you think you have a basis to seek bail, in which case you would be released pending your trial in this case, you can talk to Mr. Nalven and we can make an arrangement to have argument on that motion. But I think in this case, since you've been extradited from Colombia, that would be a hard argument to win, probably.

I am going to order that you be detained between now and the trial of this case.

The rest of the proposal that the government has is that I schedule our next conference in June some time, correct?

MR. KIM: No, your Honor. The government actually had requested a period of approximately four months.

THE COURT: Four months, I'm sorry, not two months. Four months. That's a long time. That's a much longer period of time than I would typically schedule the next court appearance.

MR. KIM: I understand that, your Honor. I think given the circumstances in this case, that he was charged in another district, this is a proposal that the parties thought reflected a good attempt to potentially resolve both cases in an efficient manner.

THE COURT: Tell me the nature. What's the discovery like in this case and has it been produced?

MR. KIM: Your Honor, the discovery would consist of evidence related to the seizure of an airplane used to transport cocaine, judicialized intercepts in Colombia of the coconspirators, as well as the defendant's consensually-recorded communications via BlackBerry, body wire recordings, postarrest statement. It is obviously not through discovery, but the evidence would also consist of the testimony of cooperating witnesses.

If the Court is amenable to this, the parties are hopeful there will be a disposition at end of four months. If there is not a disposition, the government would have completed discovery by that point.

THE COURT: Mr. Nalven, you're okay with that?

MR. NALVEN: Judge, I have no problem with that. There is kind of the spirit of our posture since my client was taken into custody as a resolution, but obviously if we can't reach a resolution I'd like to have discovery and an opportunity to make a motion schedule later on.

THE COURT: I'll go along with that. I understand this is not a typical case.

What I would like from the government is a status letter in two months to tell me what's going on. Because if things have broken down I don't want to wait another two months.

I'll schedule the next court appearance for four months, which puts us at the end of August, basically. September 4, at 10:30 is when we will have our next conference. But I would like a status letter from the government by June 28. That letter should also tell me what's going on with the discovery.

Anything else we should be thinking about or talking about today?

MR. KIM: Your Honor, from the government, just to exclude time through the date of the next conference, September 4, to allow the parties to continue discussions about a disposition of the case and potentially for the production or review of discovery.

THE COURT: Any objection?

MR. NALVEN: No. Consent, your Honor.

THE COURT: Mr. Linares Castillo, I should tell you that you have a right to a speedy trial. What that means, typically, is, within 70 days of your appearance here in court today you would have that trial. Now, every case is different. Some are more complicated than others, some involve a lot of documents and recordings and a large volume of evidence, which requires a lot of review by a defendant and his lawyer. So certainly some cases will take longer than others. Because of that, the law allows for a judge to extend that 70-day period where it would be reasonable to do so.

Among the reasons that the law recognizes as legitimate reasons to extend that time period is to allow the parties, the defendant and the government, to discuss whether they will be able to resolve the case without a trial. It also is reasonable where there is a large number of wiretaps and other evidence of that sort to give the defendant more time to review those things and discuss them with his lawyer so that they will have time to decide how best to structure their defense and also whether to make any motions.

In this case it sounds as though the parties are talking, that there is perhaps the prospects of some additional conversations here and in Florida that are going to be necessary to resolve. Because there are charges that are outstanding in Florida, that's another reason why it would be necessary, I think, to extend this time out.

I am going to exclude the time between now and September 4. So that time between today and September 4 won't count towards the 70 days that I mentioned. Think of it as another way. If you think of it as a clock that is ticking and there is 70 ticks on it, the court is allowed to stop the clock. And I am going to stop the clock from now until September, so you can consider these discussions that you've already begun, and you can also begin and perhaps conclude discussions with the Southern District of Florida, where there are charges pending.

If at any point between now and September 4 you would like to come back and see me, talk to Mr. Nalven and we will schedule it right away. Okay. I don't want you to feel that I have forgotten you for four months. If at any point you think it's necessary to come back to court, talk to Mr. Nalven, he will send a letter to me, and we will schedule an appearance right here in court. Okay?

THE DEFENDANT: Yes, your Honor.

THE COURT: In the interests of justice I will exclude the time between today and September 4. I find that your interests in a speedy trial and the public's interest in a speedy trial is outweighed by these other considerations that I've mentioned.

That's all I have.

Anything else on anyone's mind?

MR. NALVEN: Nothing from our point of view, Judge. Thank you very much. Have a good weekend.

THE COURT: Mr. Fee, you're not on the docket sheet, at least you weren't on it the day or day the before. You're on this case?

MR. FEE: I am now, your Honor.

THE COURT: Let's make sure you are on the docket sheet.

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